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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

LEXISNEXIS,
a division of Reed Elsevier, Inc.,

Plaintiff,

vs.

COSGRAVE VERGEER KESTER LLP,

Defendant.

) Case No.:
)
) **COMPLAINT**
)
) **Breach of Contract**
)
) **JURY TRIAL DEMANDED**
)
)

Plaintiff LexisNexis, a division of Reed Elsevier, Inc. ("LexisNexis"), states as its allegations in this Complaint against Defendant Cosgrave Vergeer Kester LLP ("Cosgrave") as follows:

JURISDICTION, PARTIES AND VENUE

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1332, because there is complete diversity of citizenship between LexisNexis and Cosgrave and because the amount in controversy exceeds \$75,000, exclusive of interest and costs.

2. Cosgrave maintains its principal place of business in Portland, Multnomah County, Oregon.

3. LexisNexis maintains its principal place of business in Miamisburg, Montgomery County, Ohio.

4. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391(a)(2) because a substantial part of the events giving rise to the claims herein occurred within this judicial district.

5. Cosgrave is subject to personal jurisdiction in this district because its principal place of business is located in Portland, Multnomah County, Oregon.

FACTUAL BACKGROUND

6. On or about March 19, 2011, LexisNexis and Cosgrave entered into the LexisNexis Subscription Agreement (the "Agreement"), under which Cosgrave agreed to pay a monthly fee to have access to LexisNexis' online research services ("Online Services"). A copy of the Agreement is attached to this Complaint as Exhibit A. The Agreement incorporates by reference LexisNexis' Terms and Conditions, which can be found at:

<http://www.lexisnexis.com/terms/35/>.

7. Pursuant to the Agreement, Cosgrave agreed to pay as follows: (1) \$5,255.00 per month from May 1, 2011 through April 30, 2012; (2) \$5,513.00 per month from May 1, 2012 through April 30, 2013; and (3) \$5,789.00 per month from May 1, 2013 through April 30, 2014. Agreement, ¶1.3. Cosgrave also agreed to pay per the Terms and Conditions for any services outside of the Agreement.

8. Pursuant to the Terms and Conditions, Cosgrave was required to pay invoices within 10 days from receipt and:

If any charge not the subject of a legitimate dispute should remain unpaid for more than 75 days after becoming due, then LN reserves the right to require each remaining unpaid Monthly Installment for the Minimum Term to immediately be paid in full to LN.

Agreement, ¶1.2. In addition, all invoices that have not been paid within 30 days of their due date are charged a late fee of 15% per annum (or if less, the maximum rate permitted by law).

<http://www.lexisnexis.com/terms/35/pricing>, §III.1.

9. Pursuant to the Terms and Conditions, “[i]f Subscriber fails to pay charges when due, Subscriber will be liable for all costs of collection incurred by the provider of the Online Services, including, without limitation, collection agency fees, reasonable attorney’s fees, and court costs.” www.lexisnexis.com/terms/35/pricing, §III.3.

10. Pursuant to the Agreement, LexisNexis sent monthly invoices to Cosgrave. Cosgrave failed to pay the invoices as required under the Agreement and owes \$29,803.85 in past due payments.

11. LexisNexis is owed a total of \$137,862.85, plus interest, late fees, attorneys’ fees and costs, by Cosgrave under the terms of the Agreement.

12. After Cosgrave stopped paying under the Agreement, the law firm continued to use the Online Services until LexisNexis turned off the account. The retail value of the Online Services used by Cosgrave during this period was \$86,034.25.

13. LexisNexis has attempted to rectify this account with Cosgrave, but Cosgrave has failed to comply with the payment terms of the Agreement.

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**FIRST CLAIM FOR RELIEF
(Breach of Contract)**

14. This paragraph incorporates the allegations in Paragraphs 1 through 11 as if restated here.

15. On or about March 19, 2011, LexisNexis and Cosgrave entered into the Agreement under which Cosgrave would receive access to LexisNexis' online services.

16. LexisNexis has complied with all terms of the Agreement.

17. Cosgrave has materially breached the Agreement by failing to pay the monthly payments owed under its terms.

18. As a direct and proximate result of Cosgrave's actions, LexisNexis has been damaged by the breach in the amount of \$137,862.85, plus attorneys' fees and costs.

**SECOND CLAIM FOR RELIEF
(Unjust Enrichment/Quantum Meruit)**

19. This paragraph incorporates the allegations in Paragraphs 1 through 17 as if restated here.

20. LexisNexis conferred a benefit upon Cosgrave by providing the Online Services to them.

21. Cosgrave knew LexisNexis conferred a benefit upon it by providing the Online Services. In fact, even after Cosgrave stopped paying LexisNexis, the law firm continued to use the Online Services.

22. Cosgrave retained the benefit of the services provided by LexisNexis under circumstances where it is unjust for Cosgrave not to make payment to LexisNexis. LexisNexis is entitled to recover the value of the services upon which Cosgrave benefited.

23. As a direct and proximate result of Cosgrave's actions, LexisNexis has incurred damages and Cosgrave has been unjustly enriched in the amount of \$86,034.25.

DEMAND FOR A JURY TRIAL

24. A jury trial is demanded for all issues so triable.

WHEREFORE, LexisNexis demands judgment be entered against Cosgrave as follows:

On Plaintiff's **FIRST CLAIM FOR RELIEF**:

1. For \$137,862.85 in breach of contract monetary damages, plus interest and late fees;
2. For Plaintiff's attorneys' fees;
3. For Plaintiff's costs and disbursements incurred herein; and
4. For any other such relief that the Court deems appropriate.

On Plaintiff's **SECOND CLAIM FOR RELIEF**, in the alternative:

1. For \$86,034.25 in unjust enrichment damages plus interest;
2. For Plaintiff's attorneys' fees;
3. For Plaintiff's costs and disbursements incurred herein; and
4. For any other such relief that the Court deems appropriate.

RESPECTFULLY SUBMITTED this 23rd day of August, 2013.

PARKS LAW OFFICES, LLC



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